IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9944 of 1998

Date of Decision:24.6.2004.

UNION OF INDIA

Versus

MD BRAHMBHATT C/O MS TRIVEDI

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

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1. Special Civil Application No. 9944 of 1998
   MR JS YADAV for Petitioner No. 1-2
   MR RJ OZA for Petitioner No. 1-2
   MR MS TRIVEDI for Respondent No. 1

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This petition is directed against the judgment of the Central Administrative Tribunal (CAT) Ahmedabad Bench

in Original Application (OA) No. 492 of 1997 dated August 24, 1998.

Whether reporters of Local Papers may be allowed to see the Judgment?

The Respondent MD BRAHMBHATT was the Superintendent, Central Excise and Customs Department, Ahmedabad. He was placed under suspension since criminal case was instituted against him by the Central Bureau of Investigation. The respondent sought revocation of the order of suspension through representation dated August 23, 1995 but it was not entertained. Subsequently, charge sheet was filed before the Special Judge, Court-3, Bhadra, Ahmedabad on 27.12.1996. The respondent retired on 31.5.1997. His grievance is that the retiral dues, gratuity, commuted pension, leave encashment etc. has not been paid, therefore, for seeking these retirement benefits, he moved the CAT which, after hearing the parties, passed the following order:

"The application is partly allowed. The respondents are directed to pay to the applicant at least one half of the gratuity normally payable to the applicant within a period of two months from the date of the receipt of this order subject to his executing a bond of indemnity with two sureties to the satisfaction of the respondents and also the respondents are directed to allow the applicant to commute at least one half of one third of the pension which a Government servant is entitled to commute under the CCS (Commutation of Pension) Rules, 1981, if permissible as per the Rules, subject to the conditions that the applicant will execute a bond of indemnity together with two sureties to the satisfaction of the respondents. The above mentioned amounts shall be released to the applicant within a period of three months from the date of the receipt of copy of this order. Both the above payments be made on condition that the applicant will refund the amount to the Government in case the result of the criminal case goes against him, meaning thereby, that the amount of gratuity and the amount of commutation of pension will be released to the applicant on condition that the amounts will be liable to recovery/adjustment depending on the final result of the criminal case against him. Application is accordingly dismissed [disposed] of. No order as

to costs."

Feeling aggrieved by this order, the petitioner challenged the same through this petition. Learned Counsel for the parties have been heard.

Mr. J.S. Yadav, learned Counsel for the petitioner vehemently contends that the CAT has committed serious error in allowing the relief to the respondent to the extent quoted above. Reference is made to Rule 9 and 69 of the Central Civil Services (Pension) Rules, 1972 read with Rule 4 of the Central Civil Services (Commutation of Pension) Rules, 1981. These Rules are quoted as under:

"9. Right of President to withhold or withdraw pension [(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five per mensem]

(2) (a) The departmental proceedings referred to in sub rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental

proceedings are instituted by an authority subordinate to the President, the authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his reemployment

(i) shall not be instituted save with the sanction of the President,
(ii) shall not be in respect of any event which took place more than four years before such institution, and
(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in relation to the Government servant during his service.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub rule (2), a provisional pension as provided in Rule 59 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a Government servant."

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69. Provisional pension where departmental or judicial proceedings may be pending.-

(1) (a) In respect of a Government servant referred to sub rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension, on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:"

"4. Restriction on commutation of pension No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules of the pension, as the case may be, during the pendency of such proceedings."

Therefore, Shri Yadav submitted that the petitioner is competent to withhold whole or part of pension or gratuity or both during the pendency of domestic departmental proceedings/judicial proceedings for meeting the loss caused to the department due to the negligence on the part of the respondent. Similarly, the respondent is entitled to the pension to the extent indicated under rule 69 and not competent to the commutation of pension under rule 4 the said Rules. With a view to high light the seriousness of the case, it is contended that the pecuniary loss caused to the petitioner is to the extent of 35 lakhs approximately due to lack of proper supervision on the part of the respondent.

Shri M.S. Trivedi, learned Counsel for the respondent contends that the petitioner should have proceeded against the respondent expeditiously and completed before superannuation. The matter pertains to 1995, case was registered in 1996 and the respondent retired in May, 1997. Therefore, after his retirement, he is being subjected to harrassment through prosecution and denial of retirement benefits. With regard to the case, contention is that the respondent has not committed any offence as alleged; at the most, there could be

procedural lapse at a stage which did not survive after the recovery was made from the party concerned; as such, when there is total recovery of the so called loss, no case is made out against the respondent. Learned advocate Mr. Trivedi has submitted that in absence of pension and retiral benefits as well as the suspension allowance, it is very difficult for the respondent to maintain family and meet responsibilities. Criminal prosecution has no fixed time, when it will be completed; more than eight years have passed; till this date, except the charge sheet, further proceedings have not commenced; within how much time such proceedings will come to an end is also not certain therefore, it is very difficult for the respondent to survive without retirement benefits. He also submits that another result would be the starvation of the family and affecting the education of children as well. He also submits that the non payment of the retiral benefits will also deprive the respondent of defending the cases agains him. Further, reliance was placed on H. GANGAHANUME GOWDA V. KARNATAKA AGRO INDUSTRIES LTD. [AIR 2003 SC 1526]; KERALA STATE ROAD TRANSPORT CORPORATION V. K.O. VARGHESE AND OTHERS [2003 AIR SCW 2847]; S.K. MASTAN BEE V. THE GENERAL MANAGER, SOUTH CENTRAL RAILWAY AND ANOTHER [2002 AIR SCW 4856]; GORAKHPUR UNIVERSITY AND OTHERS V. DR. SHITLA PRASAD NAGENDRA AND OTHERS [AIR 2001 SC 2433] and the Division Bench decision of this Court in Special Civil Application No. 2402 of 1998 [UNION OF INDIA V. PA JANI] decided on 1.4.1998.

Common thread passing through these decisions is that the denial of right to pension and gratuity (retiral dues) amounts to violation of the fundamental right to life guaranteed under Article 21 of the Constitution of India besides, being against the statutory provisions providing for such payments, such dues being the deferred payments for the services rendered; it is a measure of socio economic justice which inheres economic security in ripe of old age. Therefore, such payments ought not to be delayed and where it is found that they have been delayed, penalty in the form of interest is desirable to compensate an employee.

Presently, no order under Rule 9 of the Central Civil Services (Pension) Rules, 1972 is placed before us. Therefore, we proceed on the assumption that the power to withheld/withdraw benefits has not been exercised; Pension and gratuity, payable in terms of rule 69 can, therefore, be granted and in the event of the loss being recoverable from the respondent, same can be done from

out of the pension to the extent permissible. Therefore, in the facts and circumstances of the case, the CAT has passed just, proper and equitable order while dealing with the matter and sufficient care has been taken to protect interest of both the parties. It is supported by cogent and convincing reasons calling for no interference by this Court.

Consequently, no case for interference is made out. Hence, petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated forthwith. There shall be no order as to costs.

Petitioner is directed to release the benefits flowing from the order of the CAT within fifteen days from the date of receipt of copy of this order.

Direct Service is Permitted.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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